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4 UNITED STATES BANKRUPTCY COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

6 In re

7 KRISTINE ANN LaHAYE,

No. 03-10068

8 Debtor(s).  
9 \_\_\_\_\_/

10 PATRICK CABALLERO,

11 Plaintiff(s),

12 v.

A.P. No. 03-1092

13 KRISTINE ANN LaHAYE,

14 Defendant(s).  
15 \_\_\_\_\_/

16 Memorandum on Motion for Summary Judgment  
17 \_\_\_\_\_

18 Plaintiff Patrick Caballero is the former business partner of debtor and defendant Kristine  
19 LaHaye. In April, 2002, Caballero obtained a judgment for \$492,379.00 against LaHaye based on her  
20 conduct as a partner. The judgment was rendered by a state court judge after trial. In this adversary  
21 proceeding, Caballero seeks a determination that the state court judgment is nondischargeable. His  
22 motion for summary judgment, based on the state court findings, is now before the court.

23 The state court judgment awarded the damages based on “breach of contract, breach of fiduciary  
24 duty, conversion, constructive fraud, and for accounting” without specifying which damages were based  
25 on each count. The court did find that the total damages consisted of “\$119,679.00 in accounting  
26 damages plus \$372,700.00 to compensate plaintiff for the loss of his one-half interest” in the partnership.

1           Since judgments based on breach of contract and constructive fraud are dischargeable, and since  
2 the state court did not apportion the damages between dischargeable and nondischargeable counts or  
3 award any punitive damages, Caballero's motion for summary judgment must be denied. See *In re*  
4 *Harmon*, 250 F.3d 1240, 1249 (9th Cir. 2001)[state court finding of constructive fraud of partner did not  
5 collaterally estop debtor from litigating issue of fraud in bankruptcy court, because constructive fraud is  
6 not a basis for nondischargeability in bankruptcy proceedings].

7           Even if the court were to assume, as urged by Caballero, that the \$119,679.00 in "accounting  
8 damages" were in fact from defalcation and conversion, there is still no basis for declaring the remaining  
9 \$372,700.00 nondischargeable. Even though partners are fiduciaries under state law, not every breach  
10 of duty between partners constitutes "defalcation in a fiduciary capacity" under § 523(a)(4) of the  
11 Bankruptcy Code. See *Harmon*, supra, at 1248-49. While there are many ways a partner may breach his  
12 fiduciary duty under state law, he commits defalcation in a fiduciary capacity under bankruptcy law only  
13 when he misappropriates partnership property. See *In re Niles*, 106 F.3d 1456, 1463 (9th Cir.  
14 1997)[Broker liable under § 523(a)(4) to the extent she misappropriated client funds, but liability did not  
15 extend to other acts which may have been breaches of fiduciary duty under state law but did not involve  
16 entrusted funds].

17           For the foregoing reasons, Caballero's motion for summary judgment will be denied. Counsel  
18 for LaHaye shall submit an appropriate form of order.

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21 Dated: September 10, 2003

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Alan Jaroslovsky  
U.S. Bankruptcy Judge

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